

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

EXELON GENERATION LLC¹

Employer

and

Case 4–RC–20635

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO,
on behalf of INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL UNION 614²

Petitioner

**REGIONAL DIRECTOR’S DECISION
AND DIRECTION OF ELECTION**

The Employer, Exelon Generation LLC, a wholly-owned subsidiary of Exelon, Inc., produces and sells electrical power. The Petitioner, International Brotherhood of Electrical Workers, AFL-CIO, on behalf of International Brotherhood of Electrical Workers, Local Union 614, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of production and maintenance employees at 11 facilities located in eastern Pennsylvania and Maryland in the Employer’s Mid Atlantic Operating Unit. A Hearing Officer of the Board held a hearing, and the parties filed briefs with me.

The parties disagree as to the scope of the unit. The Employer contends that employees at two facilities in Texas, which are also part of the Mid Atlantic Operating Unit, should be included in the bargaining unit, while the Petitioner asserts that a unit limited to the eastern Pennsylvania and Maryland facilities is appropriate.

I have considered the evidence and the arguments presented by the parties concerning the scope of the unit, and for the reasons set forth below, I find that the employees at the petitioned-for eastern Pennsylvania and Maryland facilities constitute a geographically distinct segment of

¹ The Employer’s name was amended at the hearing.

² The Petitioner’s name was amended at the hearing.

the Employer's operation and form a unit appropriate for purposes of collective bargaining. I will first provide an overview of the Employer's operations. Then, I will present additional facts relevant to the unit determination. Finally, I will present in detail the relevant case law and the reasoning in support of my conclusion.

I. OVERVIEW OF OPERATIONS

Overall Structure

The Employer has three operating groups – Exelon PowerTeam, Exelon Nuclear, and Exelon Power. Exelon PowerTeam coordinates all of the Employer's power production, Exelon Nuclear manages the Employer's nuclear generating facilities, and Exelon Power manages facilities that generate electricity from fossil fuels, water power, and other sources. The facilities at issue in this case are in the Exelon Power operating group.

The Exelon Power operating group is divided into two major operating units, Mid Atlantic Operations and Northeast Operations. The Mid Atlantic Operations unit generates power from various facilities in eastern Pennsylvania, Maryland, and Texas, while the Northeast Operations Group operates power generation facilities in New England.³ Exelon Power's headquarters are located in Kennett Square, Pennsylvania.⁴

Exelon Power also has four support groups, Engineering and Operations Support, Construction, Business Operations, and Human Resources. A Vice President is in charge of each of the operating units and support groups.

Mid Atlantic Operations Unit Facilities

Mid Atlantic Operations Vice-President Preston Swafford is responsible for 10 generating facilities and a maintenance shop in eastern Pennsylvania and Maryland. He is also responsible for two generating plants in Texas that the Employer acquired in April 2002. The facilities in eastern Pennsylvania and Maryland include: the Eddystone Generating Station, the Cromby Generating Station, the Conowingo Generating Station, the Muddy Run Station, the Croyden Generating Station, the Fairless Hills Generating Station, the Lamokin Station, the Delaware Generating Station, the Richmond Generating Station, the Schuylkill Generating Station, and the Mechanical Group. The Texas facilities are the Mountain Creek Steam Electric Station in Dallas and the Handley Steam Electric Station in Fort Worth. There is no recent history of collective bargaining involving Mid Atlantic Operations employees.⁵

³ Exelon Power Northeast production and maintenance employees are in a bargaining unit that is represented by the Utility Workers Union of America, AFL-CIO.

⁴ Exelon Power also has unmanned combustion turbine engines in Chicago in a facility called the Southeast Chicago Energy Project.

⁵ Employees at some of the Pennsylvania facilities were represented by a non-affiliated union through the mid-1980s. At the time, the facilities were operated by the PECO Energy Company. PECO merged with Commonwealth Edison in 2000 to create Exelon.

Swafford works at the offices in Kennett Square, Pennsylvania where Exelon Power's headquarters is located. Six General Managers report to him, and five of them are responsible for one or more generating facilities.⁶

The *Eddystone Generating Station*, which is the largest generating station in the Mid Atlantic operations unit, is a coal and oil-fired facility located in Eddystone, Pennsylvania. About 125 bargaining unit employees work there. John Barnes is the General Manager in charge of this facility.

The *Cromby Generating Station*, located in Phoenixville, Pennsylvania, is another coal and oil-fired plant. The facility has about 60 unit employees, and Jim Randich is its General Manager.

The *Conowingo Generating Station*, a hydroelectric facility located on the Susquehanna River in Darlington, Maryland, and the *Muddy Run Station*, a companion hydroelectric facility located 23 miles away in Drumore, Pennsylvania, are jointly administered as the Susquehanna Electric Company. The General Manager of the Susquehanna Electric Company is John McCormick. About 35 unit employees work at the two facilities.

The Employer also has a group of facilities collectively called Peaking Stations,⁷ which includes the *Croyden Generating Station* in Bristol, Pennsylvania, the *Fairless Hills Generating Station* in Fairless Hills, Pennsylvania, the *Lamokin Station* in Chester, Pennsylvania, the *Delaware Generating Station*, *Richmond Generating Station*, and the *Schuylkill Generating Station* in Philadelphia, and the *Mechanical Group*,⁸ which is also in Philadelphia. About 90 unit employees work in Peaking Stations. The position of General Manager for Peaking Stations is currently vacant.

Exelon Power – Texas consists of the *Handley Generating Station* in Fort Worth and the *Mountain Creek Generating Station* in Dallas, Texas. Both of these stations are powered by natural gas. Gerry Sanchez serves as the General Manager for Exelon Power – Texas, and there are about 55 employees in these two facilities.

The eleven Mid Atlantic Operations facilities in Pennsylvania and Maryland are all located within 100 miles of the unit's headquarters in Kennett Square. The two Texas facilities are about 25 miles apart and at least 1200 miles from Kennett Square.

⁶ The sixth General Manager, Plant Assessment General Manager James Rooney, monitors the condition of existing plants and reviews the capabilities of facilities that Exelon Power is considering buying. No unit employees report to Rooney, and he is not responsible for day-to-day management of any of the facilities within Mid Atlantic Operations.

⁷ They are called the Peaking Stations because they only operate at times of peak demand for electricity.

⁸ The Mechanical Group is also called the Oregon Maintenance Shop.

Exelon Power Support Groups

The Exelon Power support groups provide services to both the Mid Atlantic Operations and Northeast Operations operating units. The Engineering and Operations support group includes: a Training unit which coordinates training for employees in both operating units; a Predictive Maintenance unit which tests equipment at generating facilities; an Environmental and Safety unit which monitors compliance with environmental and safety regulations; and the Engineering and Project Maintenance units, which provide engineering and construction management services to the operating units.

The Business Operations support group includes an Information Systems unit, which manages and maintains the computer and other information systems used by the operating units. It also includes a Finance unit, which monitors operating unit performance. The Exelon Power Human Resources support group determines personnel policies for both operating units.

II. FACTS CONCERNING FACILITIES IN THE MID ATLANTIC OPERATING UNIT

Supervision

Employees at all of the Mid Atlantic operating unit facilities, including the Texas plants, perform similar functions. Personnel policies are centrally determined by Exelon Power's Human Resources Department, and the same job classification scheme is used in each of the facilities. Employees in all of the facilities are paid according to the same wage scale and receive the same fringe benefits.

General Managers may recommend termination of employees within their areas of supervision, but the recommendations must be approved by Swafford.⁹ It is not clear whether discipline short of termination can be imposed without central management approval. Thus, Exelon Power's written personnel policies do not appear to require such approval, but Susquehanna Electric Company General Manager McCormick testified that he speaks with representatives in the Exelon Power Human Resources Department before imposing discipline.

Openings in any of the plants within Mid Atlantic Operations are posted at all facilities, and any employee can bid on these openings. The Exelon Power Human Resources Department participates in interviewing and ranking applicants for openings, but the General Manager of the facility in which the opening occurs decides whom to hire.

Employees throughout Mid Atlantic Operations receive written performance appraisals twice a year, and an employee's rating can determine whether he or she receives a wage increase. The appraisals are prepared initially by the employee's immediate supervisor and then reviewed by the General Manager of the employee's facility. All of the General Managers then

⁹ The two General Managers who testified at the hearing each recalled recommending the termination of one employee and indicated that their recommendations were followed by upper management

meet as a group with Swafford to discuss the evaluations in an attempt to ensure consistency. The same appraisal form is used for employees at all facilities, although the standards applied in completing the form may vary from facility to facility. For instance, the number of performance errors needed to produce an unsatisfactory rating may be different at different facilities.

Exelon Power maintains a dispute resolution procedure that employees can use to challenge certain management decisions. Some of the complaints filed under the procedure may be reviewed by a panel of supervisors and employees that renders a final decision on the merits. At least one employee from the Texas plants has used the procedure, and the panel that considered the Texas employee's case included employees and supervisors from the Employer's Pennsylvania plants and met in Pennsylvania.

Contact, Interchange, and Transfers

A number of supervisors and managers transferred to Texas facilities from plants in Pennsylvania shortly after Exelon acquired the Texas plants in April 2002. Some clerical employees from Pennsylvania visited Texas following the purchase to assist in connecting the Texas facility to the Exelon Power computer system and to help with the integration of the Texas employees into the Exelon Power payroll system. Additionally, a group of about 20 maintenance employees from Pennsylvania spent two weeks in Texas to educate Texas employees on Mid Atlantic Operations practices and procedures. There is no evidence of other temporary transfers of non-supervisory employees to or from Texas, and no non-supervisory employees have been permanently transferred between the Texas and Pennsylvania facilities. There is no other evidence of contact between employees from the Texas facilities and employees from the eastern Pennsylvania and Maryland facilities.

Finances, Administration, and Marketing

Each of the General Managers prepares annual operating and capital expense budgets that are incorporated into the budget for Mid Atlantic Operations. Profit and loss is calculated at the Mid Atlantic Operations level; separate profit-and-loss statements are not prepared for individual facilities. Funds may be transferred from the budget of one General Manager to the budget of another during the course of a budget cycle.

A Financial Analyst works at the Texas plants monitoring expenditures for those plants. This Analyst reports directly to Texas General Manager Sanchez. The Financial Analysts who monitor expenditures at the Pennsylvania facilities report to the Mid Atlantic Operations Comptroller and are considered part of the Mid Atlantic Business Operations support group. Similarly, the Material Coordinators who staff the warehouses and storerooms in Pennsylvania and Maryland are considered part of the Business Operations support group and report to the Mid Atlantic Operations Supply Director. The Material Coordinators who maintain storerooms in Texas are considered part of the Exelon Power – Texas group and report to General Manager Sanchez. There are also Engineers, Environmental Specialists, and equipment testers (CBM Techs) in Texas who report to Sanchez. In Pennsylvania and Maryland, employees in these classifications are considered part of the Engineering and Operations support group and do not report to the General Managers who supervise the operations of the generating facilities.

The Employer's PowerTeam markets the electricity produced by Exelon Mid Atlantic's generating plants. The PowerTeam is in daily contact with each facility to indicate how much power it should produce. The electricity produced at the plants in Pennsylvania and Maryland is marketed through PJM, an organization that coordinates the movement of electricity through an area that includes the entire states of Maryland and Delaware and portions of Pennsylvania, New Jersey, Virginia, and West Virginia. Within this area, PJM determines how much electricity will be needed and which generating plants will produce it. The electricity produced at the Texas plants is marketed through the Electric Reliability Council of Texas, an organization that performs the same functions as PJM in an area that includes most of the state of Texas.

Miscellaneous

Each General Manager is essentially responsible for day-to-day operations at the facility or facilities within his area of supervision. However, Mid Atlantic Operations Vice-President Swafford exercises some control of the facilities through a daily conference call and bi-monthly meetings with the General Managers to review operations.¹⁰ There is also a separate monthly meeting to review the financial condition of Mid Atlantic Operations, and Swafford visits each plant once a month to review compliance with performance standards. Additionally, representatives from each plant meet periodically with the Exelon Power Safety Coordinators.

According to the Employer's witnesses, operations at the Mid Atlantic Operations unit's Pennsylvania and Maryland plants would not be affected if the Texas plants were shut down, and the Texas plants would not be impacted by a shutdown of facilities in Pennsylvania and Maryland.

III. ANALYSIS

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends there. *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). See *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

Recognizing that operations in the utility industry are often functionally integrated, the Board has noted that the optimum bargaining unit is systemwide. *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973). The Board has, however, also recognized that less than systemwide units may be appropriate where: the employees requested have no recent history of bargaining on a broader basis; the proposed unit encompasses a distinct administrative or geographic subdivision of the employer's operations; the employer vests substantial autonomy in

¹⁰ General Managers may participate in these conferences by telephone. The Texas General Manager or one of the Texas Plant Managers usually attends one of the monthly meetings in person and the other via teleconference.

supervisors at the unit level; and no union seeks representation in a larger unit. *Texas Electric Service Co.*, 261 NLRB 1455, 1458 fn. 13 (1982).

The Board has already effectively found that a bargaining unit consisting of production and maintenance employees employed at the Mid Atlantic Operations facilities in Pennsylvania and Maryland is appropriate. Exelon was created in 2000 as a result of the merger of PECO Energy Company and Commonwealth Edison. Before the merger, the Mid Atlantic Operations' Pennsylvania and Maryland facilities were operated by PECO and comprised all of PECO's non-nuclear generating plants. In 1995, a union petitioned to represent separate units of employees at the Cromby and Eddystone Generating Stations, but PECO asserted that the unit had to be systemwide, including employees at all of its nuclear as well as its non-nuclear generating facilities. The Board adopted an intermediate position, concluding that the non-nuclear facilities were an autonomous administrative segment of the PECO organization and that a unit limited to employees at the non-nuclear facilities would be appropriate. *PECO Energy Company*, 322 NLRB 1074, 1079-82 (1997).

The continued viability of a unit of eastern Pennsylvania and Maryland plant employees is not in issue in this proceeding. The question now is whether employees at the Employer's two recently acquired Texas facilities must be added to the unit. For the following reasons, I find that the Texas employees do not have to be included in the same unit with the employees in eastern Pennsylvania and Maryland. I reach this conclusion for a number of reasons.

Significantly, the Texas employees comprise a geographically distinct subdivision within Mid Atlantic Operations. The Texas plants are at least 1200 miles from Mid Atlantic Operations headquarters in Kennett Square and almost as far from the nearest of the Pennsylvania and Maryland facilities included in the unit. In general, geographic coherence is an important consideration in determining whether a bargaining unit is appropriate. *Southern California Water Company*, 228 NLRB 1296 (1977); *Central Power & Light Company*, 195 NLRB 743, 745-746 (1972). Considering the vast distance between the Texas facilities and the Pennsylvania and Maryland facilities, geography is a particularly significant factor in favor of excluding the Texas employees. See, *Texas Electric Service*, supra; *TRT Telecommunications Corp.*, 230 NLRB 139, 141 (1977); *Pacific Lighting Service Co.*, 181 NLRB 726 (1970); *Idaho Power Co.*, 179 NLRB 22 (1969); *Monongahela Power Co.*, 176 NLRB 915, 916-917 (1969).¹¹ This factor is not determinative by itself, however.

¹¹ The Employer's brief cites a number of cases to support its claim that geography should not be a significant factor in determining unit scope, but these cases are clearly distinguishable from the instant case. *Hazard Express, Inc.*, 324 NLRB 989 (1997) and *Capital Coors*, 309 NLRB 322 (1992), both involved requests by petitioning unions for multi-location units where the employers argued for single location units. The question in those cases was whether employees at geographically separate facilities *might* be placed in the same bargaining units. In contrast, Petitioner herein is seeking to exclude the Texas employees, and the question is whether those employees *must* be included in a unit with workers who are located at distant facilities. The issue in *Trident Seafoods, Inc.*, 318 NLRB 738, 739-740 (1995), enf'd. in pertinent part, 101 F. 3rd 111 (D.C. Cir. 1996), was whether an historically recognized unit consisting of two facilities separated by 750 miles survived a change in ownership. Since there is no history of collective bargaining in this case, there is no issue of whether an historic unit has survived. In *Acme Markets, Inc.*, 328 NLRB 1208, 1209 (1999), *New England Telephone*, 280 NLRB 162 (1986), and

Additionally, the Texas facilities are organized as a separate administrative subdivision, Exelon Power – Texas, within Mid Atlantic Operations. Exelon Power - Texas has its own General Manager and its own budget and clearly constitutes a distinct entity within the Mid Atlantic organization.

Further, Exelon Power - Texas appears to enjoy greater autonomy than the other administrative subdivisions within Mid Atlantic Operations, including the Susquehanna Electric Company plants and the Peaking Stations. Thus, the other subdivisions share centrally supervised warehouse employees, engineers, environmental coordinators, and equipment testers, while Texas has its own employees in these classifications, and those employees report to the Texas General Manager rather than to supervisors in Kennett Square. Also, in contrast to the other subdivisions, Texas has its own Financial Analyst who works in Texas analyzing Texas expenditures and reporting to the Texas General Manager.

The General Managers enjoy substantial autonomy over personnel matters in their facilities. They hire employees who work in their areas and initiate both discipline and performance evaluations. Although personnel policies are centrally determined and disciplinary actions and performance evaluations centrally reviewed, the Board has found less than systemwide units appropriate despite such restrictions on local control. See *New England Telephone and Telegraph Co.*, 249 NLRB 1166, 1167 (1980); *Southern California Water Co.*, supra; *Natural Gas Pipeline Company of America*, 223 NLRB 1439, 1440 fn. 9 (1976); *Monongahela Power Co.*, supra; *Western Light & Telephone Co.*, 129 NLRB 719 (1960).

There has been little contact and interchange between employees of the Texas plants and employees of the other facilities in the Mid Atlantic Operations unit. A small number of Pennsylvania and Maryland employees were temporarily transferred to Texas for brief periods immediately following acquisition to assist with the installation of the Employer's systems. Otherwise, there have been no temporary or permanent transfers of employees into or out of Texas. The Employer permits Texas employees to bid on job openings in other Mid Atlantic Operations facilities, but the Board has discounted this factor in finding less than systemwide

National Telephone Company, 215 NLRB 176 (1974), the Board found larger than requested units appropriate in great part because employees were temporarily interchanged among facilities due to fluctuations in business. Such interchange is absent in this case. In *Bashas', Inc.*, 337 NLRB No. 113 (2002), *Alamo Rent-A-Car*, 330 NLRB 897 (2000), and *Catholic Community Services*, 247 NLRB 743 (1980), the Board found units to be inappropriate because employees at nearby facilities were excluded. The unit sought by Petitioner in this case includes employees in all facilities run by Mid Atlantic Operations in Pennsylvania and Maryland, and the only excluded employees work at least 1200 miles away in Texas. Finally, in *Macy's West, Inc.*, 327 NLRB 1222 (1999), the Board found that the unit had to include employees at geographically separate facilities because they shared the same immediate supervisor and there was significant temporary interchange. There is almost no interchange in this case, and none of the Texas employees share supervision with employees in Pennsylvania and Maryland. Moreover, some of the cited cases refer to geographic proximity as a significant factor in determining appropriate bargaining units. See, *Macy's West, Inc.* supra; *Bashas', Inc.*, supra; *Alamo Rent-A-Car*, supra.

units appropriate. See *Southern California Water Co.*, supra; *Pacific Lighting Service Co.*, supra; *Southwest Gas Corp.*, 199 NLRB 486 (1972).

The extent of functional integration among unit employees is not so considerable as to require the inclusion of the Texas workers in a broader unit. None of the unit employees in Texas are responsible for operations extending beyond the Texas facilities. See *Texas Electric Service*, supra. Moreover, the Texas facilities serve a market different from the market serviced by the facilities in Pennsylvania and Maryland. Electricity from the Texas facilities is marketed in Texas through the Electric Reliability Council, while electricity from the Pennsylvania and Maryland plants is marketed in the Middle Atlantic States through PJM. See *New England Telephone*, supra; *United Gas, Inc.*, 190 NLRB 618 (1971); *Pacific Northwest Bell Telephone Co.*, 173 NLRB 1441 (1968); *Pacific Lighting Service Company*, supra.

It is also significant that a work stoppage in Texas would not impact operations in Pennsylvania and Maryland and that a work stoppage in Pennsylvania and Maryland would not impact operations in Texas. See *Natural Gas Pipeline Co.*, supra; *New England Telephone*, supra; *TRT Telecommunications Corp.*, supra; *Southern California Water Co.*, supra.

Finally, there is no recent history of collective bargaining, and no union is currently seeking to represent a unit that includes the Texas employees with the employees in Pennsylvania and Maryland.

Based on the above factors, I conclude that the weight of the evidence supports a finding that the employees at the eastern Pennsylvania and Maryland facilities have a sufficiently distinct community of interest to warrant a separate unit. The inclusion of employees from the Texas facilities in a broader unit is not required. Thus, a unit limited to the production and maintenance employees in the Mid Atlantic Operations facilities in eastern Pennsylvania and Maryland is appropriate, and I shall direct an election in the petitioned-for unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. With one exception, the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The hearing officer rejected Petitioner's proposed Exhibits 10 and 11. Petitioner's Exhibit 10 is an Internet Web Page describing the operations of PJM. Petitioner's Exhibit 11 is an Internet Web Page describing the North American Electric Reliability Council, which includes information about the operations of the Electric Reliability Council of Texas. These exhibits contain information relevant to a determination of the issues presented by this proceeding, and I therefore overrule the hearing officer and include them in the record.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain of the employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time Chemistry Technicians, Control Room Operators, Fuel Production Technicians, I&C Technicians, Maintenance Technicians, Production Technicians, and Utility Technicians employed by the Employer at its Conowingo Generating Station, Cromby Generating Station, Croydon Generating Station, Delaware Generating Station, Eddystone Generating Station, Fairless Hills Steam Generating Station, Lamokin Station, Muddy Run Station, Richmond Generating Station, Schuylkill Generating Station, and Mechanical Group; excluding all other employees, Foremen, office clerical employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO, on behalf of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 614**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic

strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 30, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VI. **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **June 6, 2003**.

Signed: May 23, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

440-3375-8700

440-3375-8750

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